

PATENT COOPERATION TREATY

From the
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

PCT

WRITTEN OPINION OF THE INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY (PCT Rule 66)

To:

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Date of mailing
(day/month/year) 02.02.2006

Applicant's or agent's file reference
16114-WO-03

REPLY DUE within 1 month(s)
from the above date of mailing

International application No.
PCT/IL2005/000086

International filing date (day/month/year)
24.01.2005

Priority date (day/month/year)
26.01.2004

International Patent Classification (IPC) or both national classification and IPC
A61C5/02

Applicant
HOF, Rephael et al.

1. ☒ The written opinion established by the International Searching Authority:
☒ is ☐ is not
considered to be a written opinion of the International Preliminary Examining Authority
2. This second report contains indications relating to the following items:
 - ☒ Box No. I Basis of the opinion
 - ☐ Box No. II Priority
 - ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - ☐ Box No. IV Lack of unity of invention
 - ☒ Box No. V Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - ☐ Box No. VI Certain documents cited
 - ☐ Box No. VII Certain defects in the international application
 - ☐ Box No. VIII Certain observations on the international application
3. The applicant is hereby **invited to reply** to this opinion.

When? See the time limit indicated above. The applicant may, before the expiration of that time limit, request this Authority to grant an extension, see Rule 66.2(e).

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also: For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4bis. For an informal communication with the examiner, see Rule 66.6. For an additional opportunity to submit amendments, see Rule 66.4.

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.
4. The final date by which the international preliminary report on patentability (Chapter II of the PCT) must be established according to Rule 69.2 is: 26.05.2006

Name and mailing address of the international preliminary examining authority:



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**WRITTEN OPINION OF THE INTERNATIONAL
PRELIMINARY EXAMINING AUTHORITY**

International application No.
PCT/IL2005/000086

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
 - ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements** of the international application, this opinion is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed")*:

Description, Pages

1-32 as originally filed

Claims, Numbers

1-30 received on 14.11.2005 with letter of 07.11.2005

Drawings, Sheets

1/14-14/14 as originally filed

- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
 - ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):
 4. ☐ This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
 - ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):

**WRITTEN OPINION OF THE INTERNATIONAL
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International application No.
PCT/IL2005/000086

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application,
☒ claims Nos. 28-30

because:

- ☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (specify):
- ☐ the description, claims or drawings (*indicate particular elements below*)-or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
- ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
- ☒ no international search opinion has been established for the said claims Nos. 28-30
- ☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:
- | | |
|----------------------------|--|
| the written form | <input type="checkbox"/> has not been furnished |
| | <input type="checkbox"/> does not comply with the standard |
| the computer readable form | <input type="checkbox"/> has not been furnished |
| | <input type="checkbox"/> does not comply with the standard |
- ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.
- ☐ See supplemental sheet for further details

**WRITTEN OPINION OF THE INTERNATIONAL
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International application No.
PCT/IL2005/000086

Box No. V Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-27
	No: Claims	
Inventive step (IS)	Yes: Claims	1-23,24,27
	No: Claims	25,26
Industrial applicability (IA)	Yes: Claims	1-27
	No: Claims	

2. Citations and explanations:

see separate sheet

**WRITTEN OPINION OF THE INTERNATIONAL
PRELIMINARY EXAMINING AUTHORITY
(SEPARATE SHEET)**

International application No.

PCT/IL2005/000086

Re Item V

**Reasoned statement with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

Claims 1-23,27 as filed with the letter dated 07.11.2005 appear to satisfy the requirements of novelty, inventive step and industrial applicability.

Non Unity

New independent claim 24, although novel over the prior art cited, is not unitary with claims 1 and 25. The reason for this is that there are no technical features common to both claim 1 (or claim 25) and claim 24, and there is no common inventive concept linking the two. In other words, the apparatus of claim 24 could be carried out in/with an instrument which is NOT the same as that of either claim 1 or claim 25

New independent claim 25 is also non unitary with claim 1 and claim 24 following the same reasoning as that for claim 24. Dependent claim 26 is hence also non-unitary.

In addition to the non-unity objection, claim 25 is also not inventive over prior arts D1 and D2. The latter, in fact, differ from claim 25 only in that they do not mention superelastic materials or shape memory alloys for the longitudinal element. These are however a simple matter of design choice available to the skilled person when designing instruments for cleaning of root canals, and the benefits from using these materials are easily foreseeable in advance.

Treatment of the human body

New claims 28-30 correspond to original claims 37-39 for which no search was carried out because they are a clear violation of Rule 39.1 PCT.